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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/838,142
Filing Date: April 20, 2001
Appellant(s): SUORSA ET AL.

Roberto de Leon, Reg. No. 58,967
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/8/2008 appealing from the Office action mailed 6/5/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,816,964	Suzuki et al,	11-2004
6,662,221	Gonda et al	12-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1> Claims 32, 33, and 36-38 remain rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki et al. (U.S. Patent Number 6,816,964), hereinafter referred to as Suzuki.

2> Suzuki has disclosed:

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- <Claim 32>

A method for executing commands in a system having a database (figure 2, item 105), a plurality of devices remote from the database (figure 1, items 200) and a gateway (figure 2, item 107) that provides a communications interface between said remote devices and said database, comprising the following steps:

storing a queue in said database containing a sequence of commands to be executed (figure 1, item 11);

retrieving, at said gateway, a command from the queue and transmitting the retrieved command from the gateway to an agent running on at least one of said remote devices, for execution on said one device (column 8, lines 19-24);

at said gateway, receiving a message from the agent reporting the results of the execution of the command (column 8, lines 25-28);

retrieving, at said gateway, the next command from the queue in response to receipt of said message, and transmitting said retrieved next command to the agent for execution (column 8, lines 28-37);

in response to receiving a message at the gateway from the agent reporting the results of the execution of at least one command, transmitting a command from the gateway to the agent on the remote device to initiate a reboot process (column 8, lines 38-40);

placing the queue in a reboot status in response to the initiation of the reboot process (column 8, lines 40-45);

receiving at the gateway a message from the agent indicating the completion of the reboot process at the remote device (column 8, lines 46-49);

removing the queue from reboot status in response to said message, and checking at the gateway whether any commands remain in the queue that have not yet been completed (column 8, lines 49-53); and

resuming the step of retrieving commands in the queue and transmitting them to the agent if uncompleted commands are determined to be present in the queue (column 8, lines 49-53).

- <Claim 33>

  The method of claim 32, wherein said queue is placed in said reboot status in response to receipt at said gateway of a message from the agent on the remote device indicating that the reboot process is in progress (column 8, lines 40-45).

- <Claim 36>

  The method of claim 32, further including the step of updating the status of the queue to indicate the command that has been most recently transmitted to the agent for execution (column 10, lines 28-34).

- <Claim 37>

  The method of claim 32, wherein said sequence of commands cause the agent to install and configure software on the remote device (column 8, lines 31-37).

- <Claim 38>

  The method of claim 32, wherein said message indicating the completion of the reboot process at the remote device includes a report of the configuration of the remote device (column 9, lines 8-12).

Since all the limitations of the invention as set forth in claims 32, 33, and 36-38 were disclosed by Suzuki, claims 32, 33, and 36-38 are rejected.

Claim Rejections - 35 USC § 103

3> The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4> Claims 34 and 35 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki, as applied above, in view of Official Notice. In response to the applicant's request for documentary evidence under MPEP 2144.03, the use of Official Notice is herein supported by Gonda et al. (U.S. Patent Number 6,662,221), hereinafter referred to as Gonda. Thus, claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Gonda.

5> Suzuki disclosed a method of remotely installing a program on a client by a pre-downloaded agent that records an install execution state of the client. In an analogous art,

Gonda disclosed a method for remotely configuring network elements in order to satisfy conditions associated with a user's request.

6› Concerning claims 34 and 35, Suzuki did not explicitly state opening a new communication session comprising a secure socket with the gateway. However, the ability to begin a new communication session between a client and a server was well known in the art at the time of the applicant's invention, especially in systems attempting to securely transmit a message from one side to the other. Further, the use of a secure socket for communications sessions and the use of SSL were well known in the art at the time of the applicant's invention. This is evidenced by Gonda who explicitly states opening a new communication session via SSL between a client and a gateway. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Suzuki by adding the ability to open a new communication session comprising a secure socket with the gateway as provided by Gonda. Here the combination satisfies the need for greater security in the transmission of messages over a network as is well known in the art.

7› Thereby, the combination of Suzuki and Gonda discloses:

- ‹Claim 34›

  The method of claim 33, wherein said agent opens a new communication session with said gateway to transmit said message (Gonda, column 7, lines 60-67).

- <Claim 35>

  The method of claim 34, wherein said new communication session comprises a secure socket (Gonda, column 7, lines 60-67).

Since the combination of Suzuki and Gonda discloses all of the above limitations, claims 34 and 35 are rejected.

(10) Response to Argument

I. APPELLANT'S ARGUMENTS SHOULD NOT BE FOUND PERSUASIVE BECAUSE SUZUKI TEACHES THE LIMITATIONS AS CLAIMED.

Appellant presents three arguments on appeal. First, Appellant argues that Suzuki's teaching of a hard disk drive does not read on Appellant's claimed database. Appellant next argues that Suzuki's teaching of a script file does not read on Appellant's claimed queue. Finally, Appellant argues that Suzuki fails to teach "placing the queue in a reboot status." None of these arguments should be found persuasive because Suzuki does disclose the limitations as claimed.

A. Suzuki's hard disk drive reads on Appellant's claimed database.

Appellant concedes that "a hard disk drive" such as the one taught by Suzuki "may be used to store a database" but argues that not every hard disk drive is a database (appeal brief, pg. 12:¶2). In support of this argument, Appellant cites a dictionary definition of the term "database" defined as a "file composed of records" where a file is further defined as "a complete, named collection of information" (appeal brief, pg. 11:¶2). Appellant concludes that since "a database is defined as a type of file" and Suzuki's hard disk drive is not a file, interpreting Suzuki's hard disk drive as a database is unreasonable (appeal brief, pg. 12:¶1).

Contrary to Appellant's argument, Suzuki provides clear evidence that would have led one of ordinary skill in the art to interpret Suzuki's hard disk drive (Suzuki, Figure 1 «item 105») as reading on Appellant's database (Appellant's specification, Figure 7 «item 32»). Suzuki discloses that the hard disk drive stores a variety of programs and files (column 6, lines 51-59). The drive therefore is a "collection of information" as set forth in Appellant's submitted definition. The programs stored therein are composed of records that allow for operations to be performed on them such as updating and retrieving (Suzuki col. 9, lines 61-67). Based on the foregoing, one of ordinary skill in the art was provided with clear signs to have interpreted Suzuki's hard disk drive as a database as claimed by Appellant.

B. Suzuki's script file reads on Appellant's claimed queue.

Referring again to a dictionary definition, Appellant argues that the claimed queue should be interpreted as a "multi-element data structure" where elements can be removed in different ways (appeal brief, pg. 13:¶1). Appellant argues that Suzuki's script file is not a multi-element data structure where elements may be removed. Appellant's argument should not be found persuasive because Suzuki meets the claim as written as well as meeting Appellant's submitted definition.

According to Appellant's claim 1, the claimed queue contains a sequence of commands to be executed where each command may be retrieved and transmitted for execution at a device. Suzuki's script file meets this limitation. The script file contains an execution script which prescribes a process for executing commands (col. 6, lines 51-65). The commands are retrieved from the script file and transmitted for execution at a device (col. 6, line 66 to col. 7, line 9). Thus, Suzuki's script file meets the limitations of the queue as claimed.

Additionally, Suzuki's script file meets Appellant's submitted dictionary definition of a "queue" as a multi-element data structure. A "data structure" is simply defined as "an organizational scheme...that can be applied to data to facilitate interpreting the data or performing operations on it" (Microsoft Computer Dictionary, Fifth Edition, pg. 145). Suzuki's script file meets this definition of a data structure. The script file organizes various commands or elements that allow operations to be performed on them such as retrieval of the commands (Suzuki, col. 8, lines 28-31). Because Suzuki also teaches that the commands are removed from the file in a certain order and because Suzuki's script is a multi-element data structure, Suzuki teaches the queue as claimed.

C. Suzuki discloses placing the queue in a reboot status.

Appellant argues that Suzuki does not disclose placing the queue in a reboot status. Appellant's specification describes the reboot status in the following context:

> "In response to receipt of this command [to reboot the device], the agent sends a result message 54 which informs the gateway that it is rebooting. The gateway does not respond to this message, but places the command queue in a reboot status. Upon rebooting, the agent sends a message 56 to the gateway to inform it that it has just rebooted. In response, the gateway checks the command queue and, if there are commands remaining to be executed, sends the next command 58 in the queue to the agent."
> (Appellant's specification, pg. 25, 0067).

Beyond this general description, Appellant's specification is devoid of any other explanation for what is meant by a "reboot status." Thus, one of ordinary skill in the art would have had to given the term its broadest reasonable interpretation that is consistent with what is recited in the specification.

The cited section describes the gateway ignoring an agent's result message and placing the queue in a reboot status. Subsequent to the rebooting, the gateway then checks the queue

to see if there are any remaining commands and selects the “next command” from the queue. Based on the foregoing description, one of ordinary skill in the art would interpret "placing the queue in a reboot status” as simply holding the position of the queue while the agent reboots so that execution of commands can continue from the point in the queue when the reboot was initiated. Suzuki teaches this functionality.

Specifically, Suzuki teaches an agent sending a notification that it is rebooting the client device (col. 8, lines 39-40). In response to this notification, Suzuki’s server (or gateway) records the notification and waits until the client is rebooted to access the command script (col. 8, lines 40-53). In this period, Suzuki’s command script file is in a period of waiting until the client device has rebooted (col. 2, lines 54-60 : implied from the fact that the agent does not have to "start again the installation returning to the beginning of the execution control information"). Once rebooted, the commands in the script file are again accessed in order to continue retrieving the commands from the point in the execution file where the agent had paused the installation (col. 6, lines 60-65 | col. 10, line 61 to col. 10, line 8 : accessing the execution script which is stored in Suzuki's control file). This teaching of marking the position in the script file where the agent has paused installation reads on the reboot status because it is in response to the initiation of the reboot process as required by Appellant's claim. Thus, Suzuki teaches placing the control file in a reboot status as claimed by Appellant.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/D. C./
Examiner, Art Unit 2152

Conferees:

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/Jeffrey Pwu/

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